



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2020-0214; FRL-9380-01-OCSP]

#### Phosphoric Acid; Exemption from the Requirement of a Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of phosphoric acid (CAS Reg. No. 7664-38-2) when used as an inert ingredient (pH adjuster) in antimicrobial formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, food-processing equipment and utensils. Technology Sciences Group Inc., on behalf of the Clorox Services Company (Representing Clorox Professional Products Company), submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting the establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of phosphoric acid when used in accordance with this exemption.

**DATES:** This regulation is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Objections and requests for hearings must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2020-0214, is available at <https://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson

Clinton Bldg., Rm. 3334, 1301 Constitution Ave., NW., Washington, DC 20460-0001.

The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805.

Due to the public health concerns related to COVID-19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit

*<https://www.epa.gov/dockets>.*

**FOR FURTHER INFORMATION CONTACT:** Marietta Echeverria, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: *RDFRNotices@epa.gov*.

## **SUPPLEMENTARY INFORMATION:**

### **I. General Information**

#### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

#### *B. How Can I Get Electronic Access to Other Related Information?*

You may access a frequently updated electronic version of 40 CFR part 180 through the Office of the Federal Register's e-CFR site at <https://www.ecfr.gov/current/title-40>.

*C. How Can I File an Objection or Hearing Request?*

Under FFDCFA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2020-0214 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2020-0214, by one of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of

boxed information, please follow the instructions at

<https://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

## **II. Petition for Exemption**

In the *Federal Register* of May 29, 2020 (85 FR 32338) (FRL-10009-84), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (IN-11392) by Technology Sciences Group Inc., (1150 18th Street, NW Suite 1000, Washington, DC 20036), on behalf of the Clorox Services Company (Representing Clorox Professional Products Company) (P.O. Box 493, Pleasanton, CA 94566-0803). The petition requested that 40 CFR 180.940(a) be amended by establishing an exemption from the requirement of a tolerance for residues of phosphoric acid when used as an inert ingredient (pH adjuster) in antimicrobial formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, food-processing equipment and utensils. That document referenced a summary of the petition prepared by Technology Sciences Group Inc., on behalf of on behalf of the Clorox Services Company (Representing Clorox Professional Products Company), the petitioner, which is available in the docket, <https://www.regulations.gov>. There were no relevant comments received in response to the notice of filing.

## **III. Inert Ingredient Definition**

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers;

microencapsulating agents; and emulsifiers. The term “inert” is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

#### **IV. Aggregate Risk Assessment and Determination of Safety**

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is “safe.” Section 408(c)(2)(A)(ii) of FFDCA defines “safe” to mean that “there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.” This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Under FFDCA section 408(c)(2)(B), EPA must take into account, among other considerations, the factors in subparagraphs (C) and (D) of subsection (b)(2). Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....”

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in

residential settings. If EPA is able to determine that a tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for phosphoric acid including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with phosphoric acid follows.

#### *A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by the relevant phosphoric acid as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at <https://www.regulations.gov> in the document “Phosphoric Acid; Human Health Risk Assessment and Ecological Effects Assessment to Support Proposed Amendment to the Tolerance Exemption When Used as an Inert Ingredient in Pesticide Formulations” in docket ID number EPA-HQ-OPP-2020-0214.

The acute oral and dermal toxicities are low in rats and rabbits treated with phosphoric acid. Phosphoric acid solutions of pH < 2.5 are corrosive. It is not a skin sensitizer.

Repeated dose studies show that phosphoric acid is not toxic at doses up to 500 mg/kg/day in rats. No parental, developmental, offspring, or reproduction toxicity is seen

up to 500 mg/kg/day. No fetal susceptibility is observed.

There is no evidence of immunotoxicity or neurotoxicity in the available studies. Phosphoric acid is negative for mutagenicity and chromosome aberrations. No tumors or cancer are observed in studies with rats.

Phosphoric acid is absorbed by ingestion, inhalation, and dermal contact and is distributed in the body as phosphate. Absorbed phosphate is filtered in the kidneys and partially reabsorbed. It is excreted mainly in the feces as calcium phosphate.

#### *B. Toxicological Points of Departure/Levels of Concern*

Phosphoric acid is an essential constituent of humans in the bones, teeth, and in many enzyme systems. Free phosphate ion ( $\text{PO}_4^{3-}$ ) is the major form in which phosphorus is absorbed from the diet. The Institute of Medicine (US) Standing Committee on the Scientific Evaluation of Dietary Reference Intakes for Calcium, Phosphorus, Magnesium, Vitamin D, and Fluoride evaluated phosphorus and established tolerable upper intake levels (ULs), 4,000 mg/day (approximately 57 mg/kg/day) for adults and 3,000 mg/day (approximately 200 mg/kg/day) for children 1 to 8 years of age. Furthermore, EFSA has established an acceptable daily intake (ADI) for phosphates, expressed as phosphorus, of 40 mg/kg body weight per day. Because a calculated cRfD from animal studies would result in values that are at least 8 times lower than the estimated acceptable consumption for humans (40-57 mg/kg/day), use of animal data is considered exceedingly conservative. Additionally, the adverse effects observed in animals occurred at doses well above the limit dose. Therefore, toxicity endpoints were not selected, and a qualitative risk assessment was performed for phosphoric acid.

#### *C. Exposure Assessment*

1. *Dietary exposure from drinking water, food and feed uses.* In evaluating dietary exposure to phosphoric acid, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from

phosphoric acid in food as follows:

Dietary exposure (food and drinking water) to phosphoric acid may occur following ingestion of foods with residues from their use in accordance with this exemption and its use as a food additive. However, a quantitative dietary exposure assessment was not conducted and is not necessary since a toxicological endpoint for risk assessment was not identified.

2. *From non-dietary exposure.* The term “residential exposure” is used in this document to refer to non-occupational, non-dietary exposure (e.g., textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

Phosphoric acid may be used in pesticide products and non-pesticide products that may be used in and around the home. Based on the discussion above regarding the lack of a toxicological endpoint for phosphoric acid, a qualitative residential exposure assessment was conducted.

3. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider “available information” concerning the cumulative effects of a particular pesticide's residues and “other substances that have a common mechanism of toxicity.”

Based on the lack of a toxicological endpoint, phosphoric acid and its metabolites are not expected to share a common mechanism of toxicity with other chemicals. For the purposes of this action, therefore, EPA has assumed that phosphoric acid does not have a common mechanism of toxicity with other substances.

#### *D. Safety Factor for Infants and Children*

Section 408(b)(2)(C) of the FFDCA requires EPA to retain an additional tenfold margin of safety in the case of threshold effects to ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the



pesticide chemical residue. EPA has not identified any toxicological endpoints of concern and is conducting a qualitative assessment of phosphoric acid. The qualitative assessment does not use safety factors for assessing risk, and no additional safety factor is needed for assessing risk to infants and children.

#### *E. Aggregate Risks and Determination of Safety*

Taking into consideration all available information on phosphoric acid, EPA has determined that there is a reasonable certainty that no harm to the general population or any population subgroup, including infants and children, will result from aggregate exposure to phosphoric acid residues. Therefore, the establishment of exemptions from the requirement of a tolerance under 40 CFR 180.940(a) for residues of phosphoric acid when used as an inert ingredient in antimicrobial pesticide formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils is safe under FFDCA section 408.

### **V. Other Considerations**

#### *Analytical Enforcement Methodology*

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

### **VI. Conclusions**

Based on the information reviewed by EPA and described above, an exemption from the requirement of a tolerance is established in 40 CFR 180.940(a) for residues of phosphoric acid (CAS Reg. No. 7664-38-2) when used as an inert ingredient (pH adjuster) in antimicrobial formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, food-processing equipment and utensils.

### **VII. Statutory and Executive Order Reviews**

This action establishes a tolerance exemption under FFDCA section 408(d) in

response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled “Regulatory Planning and Review” (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled “Reducing Regulations and Controlling Regulatory Costs” (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined

that Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

### **VIII. Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

### **List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 17, 2022.

**Marietta Echeverria,**

*Acting Director,  
Registration Division,  
Office of Pesticide Programs.*

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

**PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD**

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

2. In §180.940, amend Table 1 to paragraph (a) by adding in alphabetical order an entry for “Phosphoric Acid” to read as follows:

**§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions)**

\* \* \* \* \*

(a) \* \* \*

Table 1 to Paragraph (a)

Inert ingredients	CAS Reg. No.	Limits
*	* * *	* * *
Phosphoric Acid	7664-38-2	
*	* * *	* * *

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